**BEFORE THE**
**PHYSICIAN ASSISTANT BOARD**
**MEDICAL BOARD OF CALIFORNIA**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

| | | |
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| **In the Matter of the First Amended Accusation Against:** | ) | |
| **BLAKE MASSEY, P.A.** | ) | **Case No. 950-2014-000312** |
| **Physician Assistant License No. PA 15490** | ) | |
| **Respondent** | ) | |

## DECISION AND ORDER

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Physician Assistant Board, Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on March 2, 2018.**

**IT IS SO ORDERED February 2, 2018.**

**PHYSICIAN ASSISTANT BOARD**

**By:** _____
**Robert E. Sachs, P.A., President**

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
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*Attorneys for Complainant*

**BEFORE THE**
**PHYSICIAN ASSISTANT BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the First Amended Accusation Against:<br><br>**BLAKE MASSEY, P.A.**<br>10258 Carrousel Dr.<br>Redding, CA 96001<br><br>Physician Assistant License No. PA 15490<br><br>Respondent. | Case No. 950-2014-000312<br><br>OAH No. 2017060178<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

**IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-entitled proceedings that the following matters are true:

## PARTIES

1. Maureen L. Forsyth ("Complainant") is the Executive Officer of the Physician Assistant Board ("Board"). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by John S. Gatschet, Deputy Attorney General.

2. Respondent Blake Massey, P.A. ("Respondent") is represented in this proceeding by attorney Robert F. Hahn, whose address is:

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Robert F. Hahn
Law Offices of Gould and Hahn
2550 Ninth Street, Suite 101
Berkeley, CA 94710

3. On or about October 31, 2000, the Board issued Physician Assistant License No. PA 15490 to Respondent. The Physician Assistant License was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 950-2014-000312, and will expire on March 31, 2018, unless renewed.

## JURISDICTION

4. First Amended Accusation No. 950-2014-000312 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on August 2, 2017. Respondent timely filed her Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 950-2014-000312 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 950-2014-000312. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 950-2014-000312, if proven at hearing, constitute cause for imposing discipline upon her Physician Assistant License.

10. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in First Amended Accusation No. 950-2014-000312, and that she has thereby subjected her Physician Assistant License No. PA 15490 to disciplinary action.

11. Respondent agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

12. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in First Amended Accusation No. 950-2014-000312, shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

## RESERVATION

13. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceeding in which the Physician Assistant Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

14. This stipulation shall be subject to approval by the Physician Assistant Board. Respondent understands and agrees that counsel for Complainant and the staff of the Physician Assistant Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails

to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

1. **IT IS HEREBY ORDERED** that Physician Assistant License No. PA 15490 issued to Respondent Blake Massey, P.A. is revoked. However, the revocation is stayed and Respondent is placed on probation for six (6) years on the following terms and conditions.

2. ACTUAL SUSPENSION As part of probation, respondent is suspended from the practice of medicine as a physician assistant for 60 days beginning the effective date of this decision.

3. CONTROLLED DRUGS - DRUG ORDER AUTHORITY

Partial Restriction

Respondent shall not administer, issue a drug order, or hand to a patient or possess any controlled substances as defined by the Title 21 of the Code of Federal Regulations, Part 1308, except for those drugs listed at Title 21 C.F.R. § 1308.13, subdivision (f), anabolic steroids in Schedule III, and except for all drugs listed in Schedules IV and V of the Act. Respondent shall not prescribe any drugs listed in Schedule II or any of the other drugs listed in Schedule III, including subdivisions (a), (b), (c), (d), (e), and (g.)

Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and re-apply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this

Decision, respondent shall submit proof that respondent has surrendered respondent's DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, the respondent shall submit a true copy of the permit to the Board or its designee.

This prohibition does not apply to medications, including controlled substances listed in Schedule II and III, lawfully prescribed to respondent by another licensed health practitioner who possesses a current DEA permit. Respondent agrees to provide the Board with proof of a valid prescription upon request.

4. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. The course shall be Category I certified, limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first 6 months of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

5. EDUCATION COURSE Within 60 days of the effective date of the decision, respondent shall submit to the Board or its designee for its prior approval an educational program or course from an accredited program which shall not be less than 20 hours of Category 1 CME, in addition to CME requirements required for licensure. The education course shall be aimed at correcting any areas of deficient practice or knowledge. The course shall be Category I certified, limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first year of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

At least one course shall be required in pharmacology and appropriate drug orders.

6. ETHICS COURSE Within 60 days of the effective date of this decision, respondent

shall submit to the Board or its designee for its prior approval a course in ethics. The course shall be limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first year of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

7. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

Respondent shall pay the cost of the course. The program shall determine whether respondent successfully completes the course.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the decision, whichever is later.

8. PROHIBITED PRACTICE AREAS During probation, respondent is prohibited from operating a medical management corporation without prior approval of the Board. This includes the general corporation entitled "Massey Management." The Board, or its designee, shall have the power to review all contracts, all bank accounts, and all licensing documents to determine if Respondent's business is in compliance with the "Moscone-Knox" corporations law before providing Respondent approval to operate a medical management corporation.

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9. MAINTENANCE OF PATIENT MEDICAL RECORDS

Respondent shall keep written medical records for each patient contact (including all visits and phone calls) at the worksite and shall make them available for immediate inspection by the Board or its designee on the premises at all times during business hours.

All medical records originated by the respondent shall be reviewed, initialed, and dated daily by the supervising physician.

This condition shall be required for the first year of probation.

10. ON-SITE SUPERVISION

The supervising physician shall be on site at all times respondent is practicing.

11. APPROVAL OF SUPERVISING PHYSICIAN

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and frequency of supervision to be provided. Respondent shall not practice until the supervising physician and practice plan are approved by the Board or its designee.

Respondent shall have the supervising physician submit quarterly reports to the Board or its designee.

If the supervising physician resigns or is no longer available, respondent shall, within 15 days, submit the name and license number of a new supervising physician for approval. Respondent shall not practice until a new supervising physician has been approved by the Board or its designee.

12. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN Respondent shall notify his/her current and any subsequent employer and supervising physician(s) of the discipline and provide a copy of the Accusation, Decision, and Order to each employer and supervising physician(s) during his/her period of probation, before accepting or continuing employment. Respondent shall ensure that each employer informs the Board or its designee, in writing within 30 days, verifying that the employer and supervising physician(s) have received a copy of the Accusation, Decision, and Order.

This condition shall apply to any change(s) in place of employment.

The respondent shall provide to the Board or its designee the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervising physicians, and work site monitor, and shall inform the Board or its designee in writing of the facility or facilities at which the person practices as a physician assistant.

Respondent shall give specific, written consent to the Board or its designee to allow the Board or its designee to communicate with the employer, supervising physician, or work site monitor regarding the licensee's work status, performance, and monitoring.

13. OBEY ALL LAWS Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine as a physician assistant in California, and remain in full compliance with any court ordered criminal probation, payments, and other orders.

14. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

15. OTHER PROBATION REQUIREMENTS Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board and probation unit informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board and probation unit. Under no circumstances shall a post office box serve as an address of record, except as allowed by California Code of Regulations 1399.523.

Respondent shall appear in person for an initial probation interview with Board or its designee within 90 days of the decision. Respondent shall attend the initial interview at a time and place determined by the Board or its designee.

Respondent shall, at all times, maintain a current and renewed physician assistant license.

Respondent shall also immediately inform the probation unit, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

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16. INTERVIEW WITH MEDICAL CONSULTANT Respondent shall appear in person for interviews with the Board's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

17. NON-PRACTICE WHILE ON PROBATION Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not practicing as a physician assistant. Respondent shall not return to practice until the supervising physician is approved by the Board or its designee.

If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, respondent is required to immediately notify the Board in writing of the date of departure and the date of return, if any.

Practicing as a physician assistant in another state of the United States or federal jurisdiction while on active probation with the physician assistant licensing authority of that state or jurisdiction shall not be considered non-practice.

All time spent in a clinical training program that has been approved by the Board or its designee, shall not be considered non-practice. Non-practice due to a Board ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term.

Periods of non-practice do not relieve respondent of the responsibility to comply with the terms and conditions of probation.

It shall be considered a violation of probation if for a total of two years, respondent fails to practice as a physician assistant. Respondent shall not be considered in violation for non-practice as long as respondent is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

18. UNANNOUNCED CLINICAL SITE VISIT The Board or its designee may make unannounced clinical site visits at any time to ensure that respondent is complying with all terms and conditions of probation.

19. CONDITION FULFILLMENT A course, evaluation, or treatment completed after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of the condition.

20. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's license will be fully restored.

21. VIOLATION OF PROBATION If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

22. COST RECOVERY The respondent is hereby ordered to reimburse the Physician Assistant Board the amount of $24,400.00 within 365 days from the effective date of this decision for its investigative costs. Failure to reimburse the Board's costs for its investigation shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his/her responsibility to reimburse the Board for its investigative costs.

23. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant Board and delivered to the Board no later than January 31 of each calendar year.

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24. VOLUNTARY LICENSE SURRENDER Following the effective date of this probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request, in writing, the voluntarily surrender of respondent's license to the Board. Respondent's written request to surrender his or her license shall include the following: his or her name, license number, case number, address of record, and an explanation of the reason(s) why respondent seeks to surrender his or her license. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Respondent shall not be relieved of the requirements of his or her probation unless the Board or its designee notifies respondent in writing that respondent's request to surrender his or her license has been accepted. Upon formal acceptance of the surrender, respondent shall, within 15 days, deliver respondent's wallet and wall certificate to the Board or its designee and shall no longer practice as a physician assistant. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a physician assistant license, the application shall be treated as a petition for reinstatement of a revoked license.

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## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert F. Hahn, Esq. I understand the stipulation and the effect it will have on my Physician Assistant License No. PA 15490. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physician Assistant Board.

DATED: 10-26-17

BLAKE MASSEY, P.A.
*Respondent*

I have read and fully discussed with Respondent Blake Massey, P.A. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10-26-17

Robert F. Hahn
*Attorney for Respondent*

## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physician Assistant Board.

Dated: 10-26-17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

JOHN S. GATSCHET
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

**First Amended Accusation No. 950-2014-000312**

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Attorney General of California
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Supervising Deputy Attorney General
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*Attorneys for Complainant*

**BEFORE THE**
**PHYSICIAN ASSISTANT BOARD**
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| In the Matter of the First Amended Accusation Against:<br><br>**BLAKE MASSEY, P.A.**<br>10258 Carrousel Dr.<br>Redding, CA 96001<br><br>Physician Assistant License No. PA 15490<br><br>Respondent. | MBC Case No. 950-2014-000312<br><br>**FIRST AMENDED**<br><br>**A C C U S A T I O N**<br><br>OAH Case No. 2017060178 |

Complainant alleges:

**PARTIES**

1. Maureen L. Forsyth ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs ("Board").

2. On or about October 31, 2000, the Physician Assistant Board issued Physician Assistant License No. Number PA 15490 to Blake Massey, P.A. ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on

March 31, 2018, unless renewed. On April 21, 2017, the Board filed an Accusation against Respondent's license.

## JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 3504 of the Code provides in pertinent part for the existence of the Physician Assistant Board within the jurisdiction of the Medical Board of California.

5. Section 3528 of the Code provides in pertinent part that any proceedings involving the denial, suspension or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

6. Section 3527[1] of the Code states, in pertinent part:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"(b) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

[1] Effective: January 1, 2013. The previous language of section 3527, as set forth between January 1, 2008, to December 31, 2012, underwent stylistic changes but no substantive changes occurred.

"(c) The Medical Board of California may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the Medical Board of California, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"...

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

7. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care."

"..."

8. Section 2242 of the Code states, in pertinent part:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"..."

9. Section 2266 of the Code states, in pertinent part:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

10. Section 2262 of the Code states, in pertinent part:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

"In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500.00) for a violation of this section."

11. Section 3502[2] of the Code states, in pertinent part:

"(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant.

"(b) Notwithstanding any other provision of law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant to this subdivision shall do so only according to patient specific orders from the supervising physician and surgeon.

"The supervising physician and surgeon shall be physically available to the physician assistant for consultation when such assistance is rendered. A physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.

"(c)(1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

"(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.

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[2] Effective: January 1, 2013, and December 31, 2015. The previous language of section 3502, as set forth between January 1, 2008, and December 31, 2012, underwent stylistic changes but no substantive changes occurred. Substantial changes were made to the statute regarding physician chart review in the current version of the statute made effective January 1, 2016.

"(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow up care.

"(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

"(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

"(2) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant. The physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

"(3) Notwithstanding any other provision of law, the Medical Board of California or board may establish other alternative mechanisms for the adequate supervision of the physician assistant.

"(d) No medical services may be performed under this chapter in any of the following areas:

"(1) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

"(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, or orthoptics.

"(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

"(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

"(e) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501."

12. Section 3502.1[3] of the Code states, in pertinent part:

"(a) In addition to the services authorized in the regulations adopted by the Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

"(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

"(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided or issued. The drugs listed in the protocols shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

"(b) "Drug order" for purposes of this section, means an order for medication which is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to 'prescription' in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising

[3] Effective: January 1, 2016. The previous language of section 3502.1, as set forth between January 1, 2013, and December 31, 2015, and as set forth between January 1, 2008, and December 31, 2012, underwent stylistic changes but no substantive changes occurred.

physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

"(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.

"(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

"(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

"(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

"(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant and shall otherwise comply with the provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances registration number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

"(e) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

"(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

"(g) The board shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient."

13. California Code of Regulations, title 16, section 1399.521 states, in pertinent part:

"In addition to the grounds set forth in section 3527, subdivision (a) of the Code, the committee may deny, issue subject to terms and conditions, suspend, revoke, or place on probation a physician assistant for the following causes:

"(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon."

"...

"(d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in the regulations."

14. California Code of Regulations, title 16, section 1399.540 states, in pertinent part:

"(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

"(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

"(c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.

"(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

15. California Code of Regulations, title 16, section 1399.541, states, in pertinent part:

"Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician...

"..."

16. California Code of Regulations, title 16, section 1399.545, states, in pertinent part:

"(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

"(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

"(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

"(d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.

"(e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:

"(1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;

"(2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;

"(3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted

from, or referenced to, texts or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) days. The physician shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;

"(4) Other mechanisms approved in advance by the board.

"(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

17. Section 3541 of the Code states, in pertinent part:

"It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws."

18. Section 2406 of the Code states, in pertinent part:

"A medical corporation or podiatry corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons,..., or in the case of a medical corporation only, physician assistants..., are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

"With respect to a medical corporation..., the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board."

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19. Section 3542 of the Code states, in pertinent part:

"A physician assistant corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation, not or hereafter in effect. In the conduct if its practice, it shall observe and be bound by these statutes and regulations to the same extent as a person holding a license under this chapter."

20. Section 2286 of the Code states, in pertinent part:

"It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws."

21. Section 13400 of the Corporations Code states, in pertinent part:

"This part shall be known and may be cited as the "Moscone-Knox Professional Corporations Act."

22. Section 13401 of the Corporations Code states, in pertinent part:

"(a) 'Professional services' means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act."

"(b) 'Professional Corporation' means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5...

"..."

23. Section 13401.5 of the Corporations Code states, in pertinent part:

"Notwithstanding subdivision (d) of the Section 13401 and any other provisions of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporation designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated therein, and so long as the numbers of those licensed does

not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation..."

"(a) Medical corporation.

"...

"(7) Licensed physician assistants."

24. Section 125 of the Code states, in pertinent part:

"Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Division 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violation those provisions does either of the following:

"(a) Allows his or her license to be used by that person.

"(b) Acts as his or her agent or partner."

**COST RECOVERY**

25. Section 125.3 of the Code states:

"(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

"(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

"(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

"(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

"(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

"(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

"(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

"(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

"(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

"(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

"(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is

revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435."

**PERTINENT DRUG INFORMATION**

26. Hydrocodone with acetaminophen – Generic name for the drugs Vicodin, Norco, and Lortab. Hydrocodone with acetaminophen is classified as an opioid analgesic combination product used to treat moderate to moderately severe pain. Prior to October 6, 2014, Hydrocodone with acetaminophen was a Schedule III controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.13(e).[4] Hydrocodone with acetaminophen is a dangerous drug pursuant to California Business and Professions Code section 4022 and is currently a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b).

27. Zolpidem Tartrate – Generic name for Ambien. Zolpidem Tartrate is a sedative and hypnotic used for short term treatment of insomnia. Zolpidem Tartrate is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14(c). It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

28. Lorazepam – Generic name for Ativan. Lorazepam is a member of the benzodiazepine family and is a fast acting anti-anxiety medication used for the short-term management of severe anxiety. Lorazepam is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14(c) and Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

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[4] On October 6, 2014, Hydrocodone combination products were reclassified as Schedule II controlled substances. Federal Register Volume 79, Number 163. Code of Federal Regulations Title 21 section 1308.12.

## FIRST CAUSE FOR DISCIPLINE

(Gross Negligence-Patient J.P.)

29. Respondent's license is subject to disciplinary action under sections 3527, 2234 subdivision (b), 2242, 3502, and 3502.1 of the Code and Title 16 of the California Code of Regulations sections 1399.540, 1399.541, and 1399.545, in that she committed gross negligence during the care and treatment of Patient J.P. The circumstances are as follows:

30. On May 27, 2008[5], Respondent entered into a four-page Delegation of Services Agreement with Dr. J.F. Respondent and Dr. J.F. signed the Delegation of Services Agreement. The Delegation of Services Agreement stated that Dr. J.F. would audit the medical records for ten percent of the patients managed by Respondent under protocols adopted pursuant to Title 16 Code of Regulations 1399.545(e)(3). The Delegation of Services Agreement specifically stated at section 4, subdivision (b),

> "(b) Drug orders shall be either based on protocols established or adopted by Supervising Physician, or shall be approved by Supervising Physician for the specific patient prior to being issued or carried out. Not withstanding the foregoing, all drug orders for Controlled Substances shall be approved by Supervising Physician for the specific patient prior to being issued or carried out."

31. On June 3, 2008, Respondent's wholly owned medical management company entered into a contract with Dr. J.F.[6] The contract stated that Respondent and Dr. J.F. would provide medical services under the protocols and delegation of services agreement set forth and agreed upon by both parties. The contract also stated that Dr. J.F. would review ten percent of the charts of the patients seen by Respondent. Dr. J.F. would be paid a monthly fee to supervise Respondent by Respondent's medical management company. The medical management company would receive a share of the profits from Dr. J.F.'s alleged medical practice. A document entitled Protocols for Physician Assistant Practice was signed on June 3, 2008, by

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[5] Conduct occurring prior to August 11, 2010, is for informational purposes only, and is not alleged as a basis for disciplinary action. However, on-going violations that occurred as a result of conduct occurring prior to August 11, 2010 is serving as a basis for disciplinary action.

[6] A new contract was signed in October 2009, which set forth that Respondent would pay Dr. J.F. $1000.00 a month to provide physician assistant supervision. This agreement remained in place until 2014 when Respondent and Dr. J.F. discontinued their business relationship.

Respondent and Dr. J.F. The protocols set forth three medical reference books as the protocols under which Respondent would be operating, specifically "Current Medical Diagnosis and Treatment," "Harrison's Principles of Internal Medicine", and "Color Atlas and synopsis of clinical Dermatology". A fourth resource, "Epocrates" was handwritten into the protocols. The protocols did not include any specific directions regarding patient care, nor detail any medical procedures that Respondent was able and/or allowed to perform. The protocols did not include a formulary list for drug orders, guidance on laboratory orders, guidance on screening procedures, and guidance on radiology orders that Respondent was allowed to perform. The protocols failed to list conditions that Respondent was qualified and/or allowed to treat. The protocols did not include a list of items setting forth consultation requirements with Dr. J.F., nor was there specific guidance regarding the prescription of controlled substances by Respondent despite the Delegation of Services Agreement stating that the, "(d)rug orders shall either be based on protocols established or adopted by Supervising Physician, or shall be approved by Supervising Physician for the specific patient prior to being issued or carried out." The protocols did specifically state, "prior approval of the supervising physician is required before issuing or carrying out any drug order for a controlled substance or a drug that is not specified in the applicable treatment protocol. The protocols were silent regarding chart review.

32. On May 26, 2016, during her subject interview with the Board, Respondent was asked how the charts were selected for Dr. J.F. to review in compliance with the delegation of services agreement. Respondent admitted that she and the staff at the clinic picked the charts for Dr. J.F. to review. She stated that Dr. J.F. did not select the charts for review as set forth in the Delegations of Services Agreement. She stated it was a "missight(sic)" and that she "...was not aware..." that Dr. J.F. was supposed to select the charts for review.

33. On November 17, 2010, Respondent documented her first treatment visit with Patient J.P. All of Respondent's chart notes are handwritten on a pre-printed template. The note is signed by Respondent but is not co-signed by Dr. J.F. Two patient complaints are listed: Patient J.P. suffers from chronic fatigue; and chronic low libido. Patient J.P.'s medical history included a renal cyst from 2008 but notes that Patient J.P. is unable to do follow-up. Respondent noted that

Patient J.P. had a lumbar laminectomy in 1992 and that he uses hydrocodone for pain. She noted that he uses marijuana. Respondent placed a question mark by sleep apnea but there is no further history provided. Respondent noted that Patient J.P. suffers from hypogonadism and that he has started a testosterone supplement, but dosage and type of the supplement is not listed on the progress note nor is there a current listing of a testosterone blood level in the progress note.[7] Respondent did not document if she counseled Patient J.P. that his low testosterone level was related to chronic pain medication and/or marijuana use. In the final assessment point on the progress note, Respondent documented "lbp" for lower back pain and noted to continue a prescription of 100 Norco pills with 3 refills. She didn't note whether a back examination was conducted on Patient J.P. to support her finding that he suffered from lower back pain, nor did she list the dosage for the Norco on the progress note. In fact, the information entry area next to the word "Back" in the examination template was left blank.

34. Respondent documented Patient J.P.'s next office visit as occurring on September 26, 2012. Between November 17, 2010, and September 26, 2012, Respondent prescribed controlled substances to Patient J.P. On April 4, 2011, Respondent prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. She authorized three refills. The prescription noted that the 100 pills were to last 30 days. On July 13, 2011, Respondent prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. She authorized three refills. The prescription noted that the 100 pills were to last 30 days. On July 18, 2011, Respondent prescribed 30 pills of 10 mg. zolpidem tartrate to Patient J.P. She authorized three refills. The prescription noted that the 30 pills were to last 30 days. On October 10, 2011, Respondent prescribed 30 pills of 10 mg. zolpidem tartrate to Patient J.P. She authorized three refills. The prescription noted that the 30 pills were to last 30 days. On November 2, 2011, Respondent prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the 100 pills were to last 30 days. On December

[7] A blood result for low testosterone was documented in the patient's medical chart on February 13, 2012, and a topical prescription for testosterone was documented on November 17, 2010, in the patient's medical record.

5, 2011, Respondent prescribed 100 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the 100 pills were to last 30 days.

35. On March 6, 2012, Respondent prescribed an increased amount of 120 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the 120 pills were to last 30 days. She authorized three refills. There is no mention regarding why Patient J.P.'s Norco prescription was being increased, nor is there an office visit to support this increase in dosage. On July 26, 2012, Respondent prescribed 120 of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the 120 pills were to last 30 days. On August 29, 2012, Respondent prescribed 120 tablets of 10-325 mg. hydrocodone with acetaminophen pills to Patient J.P. The prescription noted that the 120 pills were to last 30 days. Also on August 29, 2012, Respondent prescribed 30 pills of 10 mg. zolpidem tartrate and authorized three refills.

36. Respondent failed to document informed consent, document a treatment plan, document a substance abuse history and/or perform a history and good faith physical exam to support the prescribing of controlled substances to Patient J.P. Despite Respondent prescribing or authorizing refills for a total of 1720 of 10-325 mg. hydrocodone with acetaminophen pills and 360 10 mg. Zolpidem tartrate pills to Patient J.P. between November 17, 2010, and September 26, 2012, there is no record that Dr. J.F. provided prior approval for the prescriptions. There are no progress notes between November 17, 2010 and September 26, 2012, that support the prescribing of controlled substances to Patient J.P.

37. Respondent's progress note on September 26, 2012, noted that he was, "back in Redding for 6 months." Respondent documented Patient J.P. complained of low back pain and sleep disturbance. A back examination was not documented and the entry area next to the word "back" was left blank in the examination template. Respondent documented she performed a digital rectal exam but didn't document the reason for why it was performed. Respondent documented in the center of the page that Patient J.P. had a negative benign biopsy of a lesion left biceps. No further history is given, nor is a skin examination documented. Within her assessment and plan, Respondent noted that Patient J.P. would continue 120 pills of Norco for

lower back pain, and that Patient J.P. had an atypical lesion. She noted "cryotherapy" but didn't provide a description of how many freeze thaw cycles were given, nor did she document that informed consent had been obtained prior to performing cryotherapy. In the note provided by Respondent to the Board, the note included a notation that the patient was to "RTS if worsens" if the condition worsened. However, in a copy of the same note obtained by the Board from a surgeon who saw Patient J.P. after his visit with Respondent on September 26, 2012, a review failed to show any notation which indicates alteration of the record. Respondent placed follow-up yearly in the bottom right hand corner of her note. In 2013, Respondent would later add an addendum by writing directly on the September 26, 2012, note that Patient J.P. failed to follow-up after learning of pending litigation.

38. Respondent failed to document in the September 26, 2012, note a detailed description of the atypical lesion on Patient J.P.'s arm. She failed to note the size, color, border, and elevation. She didn't describe whether it was flat, scaly, or smooth. She didn't describe or diagram the specific location where on the Patient's left biopsy the lesion was actually located. While documenting that Patient J.P. reported having a previous negative biopsy on the left biceps, Respondent stated she felt obtaining the biopsy report was unnecessary, she didn't consider performing a new biopsy, and she was not trained to review prior pathology reports. Respondent failed to seek consultation with Dr. J.F. regarding Patient J.P.'s skin lesion. Respondent chose to destroy the lesion rather than learning more about the composition of the lesion, and admitted on August 1, 2014, during a deposition, that she did not know what she had actually treated with cryotherapy. Finally, Dr. J.F. never co-signed the note from September 26, 2012, despite Respondent treating an atypical lesion with cryotherapy and her continuing prescription of controlled substances to Patient J.P. The September 26, 2012, note is only signed by Respondent.

39. Respondent documented Patient J.P.'s next office visit with her on September 10, 2013. Between September 26, 2012, and September 10, 2013, Respondent continued to prescribe controlled substances to Patient J.P. According to pharmacy records, Respondent either prescribed or authorized refills on 15 separate times to Patient J.P. for a total of 960 pills of 10-

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325 mg hydrocodone with acetaminophen, and 210 pills of 10 mg. zolpidem tartrate. There is no record that Dr. J.F. approved any of the prescriptions or refills.

40. Between September 26, 2012, and September 10, 2013, Respondent failed to document informed consent, document a treatment plan, document a substance abuse history and/or perform a history and good faith physical exam to support the prescribing of controlled substances to Patient J.P.

41. Before Patient J.P.'s next visit with Respondent, Patient J.P. was seen at the Shasta Community Health Center on June 26, 2013. He made a complaint regarding a lump on his left arm. The treating physician described a lesion that was, "left upper outer extremity with 1.5 cm x 1.5 cm well demarcated, raised, nodular lesion, irregular, some increased vasculature." The treating physician referred Patient J.P. for an excision of the lesion. On August 23, 2013, a surgical pathology report for the removed lesion revealed a diagnosis of melanoma Nodular type 6.6 mm in thickness Clark level IV[8]. By failing to properly treat the skin lesion on September 26, 2012, Respondent created an eleven-month delay in treatment for melanoma.

42. Respondent's progress note on September 10, 2013, noted that Patient J.P. had lower back pain. No back examination is documented. A wavy line is drawn through exam and review of systems. Respondent documented that Patient J.P. has a marijuana certificate. Respondent documented that Patient J.P. now suffered from melanoma on his left arm and was going to receive surgery in Southern California. Respondent noted that Patient J.P. had signed an opiate agreement with her clinic and that Norco, quantity of 120 pills, would be continued for Patient J.P.'s lower back pain. Respondent noted that she recommended Patient J.P. find a Medi-Cal provider for further treatment. The note is signed by Respondent. The note does contain an initialed "J" over the space for Dr. J.F. However, during a May 24, 2016, interview with the California Medical Board, Dr. J.F. stated that the initialed "J" that appears on the September 10, 2013, note is not his signature. During an August 1, 2014, deposition, Respondent stated that she had the authority to sign Dr. J.F.'s name.

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[8] Refers to the depth of the lesion.

43. Respondent continued to prescribe controlled substances to Patient J.P. following an appointment on September 10, 2013. Between September 10, 2013, and March 7, 2014, Respondent either prescribed or authorized refills for a total of 600 pills of hydrocodone with acetaminophen and a total of 180 pills of zolpidem tartrate. Respondent failed to document a treatment plan, document a substance abuse history and/or perform a history and good faith physical exam to support the prescribing of controlled substances to Patient J.P. On December 10, 2013, Respondent noted that Patient J.P. was a no show for an appointment, but controlled substance prescriptions and refills continued until March 7, 2014.

44. Respondent's three chart notes dated November 17, 2010, September 26, 2012, and September 10, 2013, do not conform to standard medical record formats. Many of the handwritten notations are illegible and the chief complaint and history of present illness are poorly documented. As noted above, Respondent failed to describe Patient J.P.'s skin lesion on which she had performed cryotherapy. Respondent failed to explain why she did a digital rectal exam in the September 26, 2012 chart note. She failed to explain why she was taking Patient J.P.'s oxygen saturations at each visit. Respondent failed to explain why she put a question mark by Apnea in the November 17, 2010, chart note. Respondent noted that Patient J.P. suffered from hypogonadism, but failed to document the dosage of the testosterone supplement and the current testosterone blood level in the chart. Respondent never mentioned in any of the notes that Patient J.P.'s low testosterone levels could be attributable to marijuana and/or chronic pain medication use.

45. Respondent's treatment of Patient J.P. as described above represents a separate and distinct extreme departure from the standard of care in each of the following ways: (A.) by failing to properly document Patient J.P,'s medical conditions in three chart notes spread over three years of care such that a subsequent provider could provide appropriate follow-up; (B.) by prescribing controlled substances to Patient J.P. for lower back pain without documenting a good faith exam, a treatment plan, a substance abuse history, obtaining informed consent, and/or performing a periodic review of treatment; (C.) by fraudulently altering a medical record by adding "RTC (return to clinic) if worsens" behind cryotherapy on the September 26, 2012 progress note after

learning of litigation; (D.) by failing to properly follow physician assistant supervision statutes and regulations. For example these departures include: failing to have a protocol that specifically listed the treatments and/or procedures that Respondent was allowed to provide; failing to specifically list the illnesses that Respondent was allowed to treat; failing to have Dr. J.F. approve any of the controlled substances that were provided to Patient J.P. over a three year period; and/or by failing to properly follow the procedures for physician chart review; and/or (E.) for failing to properly treat an atypical skin lesion by using cryotherapy on it without knowing what the composition of the lesion was, by failing to obtain a biopsy, by failing to obtain informed consent before performing cryotherapy, and by failing to seek consultation with Dr. J.F.

**SECOND CAUSE FOR DISCIPLINE**

(Gross Negligence-Patient G.P.)

46. Respondent's license is subject to disciplinary action under sections 3527, 2234 subdivision (b), 2242, 3502, and 3502.1 of the Code and Title 16 of the California Code of Regulations sections 1399.540, 1399.541, and 1399.545, in that she committed gross negligence during the care and treatment of Patient G.P. The circumstances are as follows:

47. Complainant re-alleges paragraphs 29 through 45, and those paragraphs are incorporated by reference as if fully set forth herein.

48. On or about May 13, 2009,[9] Respondent had her initial treatment visit with Patient G.P. Patient G.P.'s chief complaint was documented as "hormone replacement." It was noted that Patient G.P. had undergone a partial hysterectomy 17 years earlier and she complained of mood swings, fatigue, decreased libido, hot flashes, weight gain and cramping at night. Respondent did not document which muscles caused cramping. On the portion of Respondent's note regarding her examination of Patient G.P. there is a pre-printed examination template. On the template, "affect", "eyes", "chest", "cardiac" and "abdomen" were circled "normal" by the Respondent. The word "obese" is circled. Respondent did not circle anything under ears, sinus, throat, neck or back exam. The review of symptoms template contains two sets of double plus

[9] Conduct occurring prior to August 11, 2010, is for informational purposes only, and is not alleged as a basis for disciplinary action. However, on-going violations that occurred as a result of conduct occurring prior to August 11, 2010 is serving as a basis for disciplinary action.

marks and a wavy line through the rest of the columns. Respondent documented an assessment which included fatigue, hormone replacement, and mood swings. The note was not co-signed by Dr. J.F.

49. Respondent next saw Patient G.P. on November 17, 2010. Patient G.P. had complaints of hand swelling, overall body pain, and joint pains. Respondent noted vital signs of blood pressure of 132/82, pulse of 101, weight of 227 pounds. Respondent noted that Patient G.P.'s Vicodin use was increasing and that she was taking 4 to 6 Aleve[10] daily. Respondent noted that the patient suffered from dyspepsia. Respondent noted that Patient G.P. had previously undergone gastric bypass surgery 4 years earlier. Finally, Respondent noted that Patient G.P. is taking Cymbalta, that she feels bipolar, that she was having hot flashes, and mood swings. Respondent's exam was recorded on a template. "Affect", "Chest", and "Cardia" are the only items that are circled. There is no documentation of hand or joint examinations. The review of systems documents two plus signs by fatigue, a question mark by "Apnea", and a wavy line through the rest of the column. Despite Patient G.P. being on Metoprolol, a medication to lower blood pressure and pulse rate, Patient G.P.'s pulse remained elevated.

50. Respondent's assessment for the visit included the following:

"Mood disorder continue Cymbalta
Suspect PCOS[11] needs progesterone, consider metformin
Hypertension decrease Metoprolol, continue Lisinopril 20/25
Fatigue, decrease Metoprolol
Gastric reflux, continue Zantac
Generalized pain, LBP[12]: Discontinue Vicodin, use Norco 10/325 #180 max 6 a day with 3 refills
Prior bariatric surgery → still obese discuss weight loss diet changes
Getting mammogram."

Respondent failed to document any information in her note to support her finding that Patient G.P. suffered from PCOS. Respondent failed to document whether she addressed Patient G.P.'s complaint of hand swelling, joint pain or apnea. Respondent didn't document whether she

[10] Aleve is the trade name for naproxen sodium, an over-the-counter nonsteroidal anti-inflammatory drug

[11] Polycystic ovarian syndrome.

[12] Lower back pain.

performed a hand and joint examination. Respondent didn't document whether she notified the patient that Aleve is contraindicated in a former gastric bypass patient due to a high risk of ulcers. Finally, despite issuing a prescription for 180 tablets of 10-325 mg. hydrocodone with acetaminophen tablets to Patient G.P., Respondent failed to document a good faith exam, a treatment plan, a substance abuse history, informed consent, or a review of prior controlled substance treatments. The note was not co-signed by Dr. J.F. and there is no indication that he approved of Respondent's November 17, 2010, Norco prescription contained in the records. Respondent continued prescribing controlled substances to Patient G.P. for the next 4 years.

51. The next visit occurred on April 12, 2011. On February 17, 2011, Respondent had authorized a refill of 45 10 mg. tablets of Zolpidem for Patient G.P. The authorization mentioned a former clinic physician assistant K.B. as the initial prescribing provider. There was no mention of a zolpidem tartrate prescription in Respondent's prior progress note dated November 17, 2010. Respondent documented Patient G.P.'s chief complaint as recurrent urinary tract infection and that "something (was) falling out" after bowel movements. Respondent's documented additional medical history for Patient G.P. which includes, "Mom breast cancer" and the patient has a history of prior bladder suspension surgery. Patient G.P.'s vital signs included a blood pressure of 92/64, pulse of 103, and her weight was 215.8 pounds. Respondent's documentation of the physical examination is limited. She circled "eyes", "chest", "cardiac", and "abdomen" as normal. A urine test result indicated a bladder infection. Respondent documented that a pelvic exam was completed that was grossly normal and that she suspected possible rectocele.

52. In the assessment portion of the note, Respondent documented: "1. urinary tract infection, start Cipro #14 and continue Macrobid 100 mg after initial treatment; 2. Menopausal continue estradiol and 3. Atrophic vaginitis." Respondent didn't document ordering a urine culture. While Respondent documented that the pelvic exam was grossly normal, she documented that she still suspected a possible rectocele despite the presence of rectocele being plainly obvious during a pelvic exam. The note is not cosigned by Dr. J.F.

53. On May 12, 2011, Respondent provided a prescription and three refills of 180 pills of 10-325 mg. hydrocodone with acetaminophen to Patient G.P. The prescription was last filled on

April 15, 2011, according to the refill authorization request. On July 18, 2011, Respondent provided a prescription with three refills for 45 pills of 10 mg. zolpidem tartrate to Patient G.P. Respondent next saw Patient G.P. in the office on August 16, 2011. Respondent documented Patient G.P.'s vital signs as weight of 226.4 pounds, pulse of 77, and a blood pressure of 124/90. Respondent noted that Patient G.P. was relocating to Santa Cruz. Respondent documented that Patient G.P. has high anxiety but sleeping well, suffers from chronic pain, has less leg cramps, continues on Estradiol, Norco is helpful for pain and that she has dysuria. Respondent documented that Patient G.P. was on Cymbalta but that it was not helpful.

54. In the examination template, Respondent circled chest, eyes, cardiac and obese. The symptoms include a plus sign by fatigue and a wavy line through the rest of the symptoms. Respondent documented an assessment and plan as follows: 1. Anxiety, taper Cymbalta add Prozac; 2. Recurrent UTI , prescribe Macrobid for post intercourse prophylaxis and Keflex; and, 3. Fibromyalgia LBP, Cymbalta not helpful. Respondent noted a new prescription for 240 pills of 10-325 mg. Norco with four refills. Respondent filled out prescriptions for Prozac and Norco and provided them to Patient G.P. Despite increasing Patient G.P.'s hydrocodone with acetaminophen dosage, the note appears to not be co-signed by Dr. J.F. and didn't document the reason for the needed increase. Respondent failed to document whether a urine culture or urinalysis was ordered to verify Patient G.P.'s urinary tract infection.

55. In addition to the progress notes detailed above, Respondent saw Patient G.P. in the clinic on November 16, 2011, February 13, 2012, September 26, 2012, and, January 7, 2013. During that time Respondent continued to prescribe hydrocodone with acetaminophen and zolpidem tartrate to Patient G.P. The only progress note that appears to be cosigned is dated February 13, 2012. In the note dated February 13, 2012, Respondent documented under assessment that Patient G.P. may have a, "possible narcotic addiction?" and under history noted that she was "non compliant to meds history." As described above, Respondent's progress notes contained illegible words, and lack sufficient detail in recording Patient G.P.'s history, review of systems and prior examination to provide information to a subsequent medical provider. Respondent's notes fail to document a good faith exam, a treatment plan, a substance abuse

history, informed consent, and a review of prior controlled substance treatments, despite on-going controlled substance therapy.

56. On July 3, 2012, Respondent approved a prescription for Prozac for Patient G.P. and noted that Patient G.P. "no longer lives in Redding. One (refill) only needs to set herself a local provider." Despite last seeing Patient G.P. in the clinic on January 7, 2013, and documenting at that time that she "must be seen every three months for narcotics" and "needs to see new provider", Respondent continued to prescribe or refill controlled substances to Patient G.P. without clinical visits. In January 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In February 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In March 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In April 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In May 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In June 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In July 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In August 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, 30 pills of .5 mg Lorazepam, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In September 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 30 pills of .5 mg Lorazepam to Patient G.P. In October 2013, Respondent prescribed and/or refilled 45 tablets of zolpidem tartrate to Patient G.P. In November 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and increased the prescription to 60 pills of .5 mg Lorazepam

to Patient G.P. In December 2013, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P. In January 2014, Respondent prescribed and/or refilled 150 pills of 10/325 mg. hydrocodone with acetaminophen, and 45 pills of 10 mg. zolpidem tartrate to Patient G.P.

57. Respondent's final refill to Patient G.P. was on February 18, 2014, when she prescribed and/or refilled 45 tablets of 10 mg zolpidem tartrate and 150 tablets of 10/325 mg. hydrocodone with acetaminophen. In addition, Respondent prescribed 60 tablets of .5 mg. lorazepam to Patient G.P. on February 10, 2014. Respondent documented on the pharmacy printout that this was the, "last refill, must find new provider." Respondent failed to document a good faith exam, a treatment plan, a substance abuse history, informed consent, and a periodic review of prior controlled substance treatments despite providing controlled substances to Patient G.P. between January 7, 2013, and February 18, 2014. None of the prescriptions between January 7, 2013, and February 18, 2014, were co-signed and/or approved by Dr. J.F.

58. Respondent's treatment of Patient G.P. as described above represents a separate and distinct extreme departure from the standard of care in each of the following ways: (A.) by failing to adequately and accurately document the care provided to Patient G.P. in repeated progress notes, including but not limited to failing to document support for her diagnosis of PCOS on November 17, 2010, and/or failing to document support for her diagnosis of possible rectocele on April 12, 2011 and/or failing to warn and/or document warning a patient with history of gastric bypass that NSAID medications are contraindicated due to concerns regarding ulcers; (B.) by prescribing controlled substances to Patient G.P. for lower back pain without documenting a good faith exam, a treatment plan, a substance abuse history, informed consent, and/or a periodic review of treatment; (C.) by failing to properly follow physician assistant supervision statutes and regulations. For example: by failing to have a protocol that specifically listed the treatments and/or procedures that Respondent was allowed to provide; by failing to specifically list the illnesses that Respondent was allowed to treat; by failing to have Dr. J.F. approve any of the controlled substances that were provided to Patient G.P. over a four year period; and/or by failing to properly follow the procedures for physician chart review; and/or (D.) by continuing to

prescribe controlled substances to Patient G.P. between January 7, 2013, through February 19, 2014, without actually seeing Patient G.P. in the clinic.

**THIRD CAUSE FOR DISCIPLINE**

(Repeated Negligent Acts - Patients J.P. and G.P.)

59. Respondent's license is subject to disciplinary action under sections 3527, 2234, subdivision (c), 2242, 3502, and 3502.1 of the Code and Title 16 of the California Code of Regulations sections 1399.540, 1399.541, and 1399.545, in that she committed repeated negligent acts during the care of Patients J.P. and G.P. as more fully described above. The circumstances are as follows:

60. Complainant realleages paragraphs 29 through 58, and those paragraphs are incorporated by reference as if fully set forth herein.

61. Respondent's license is subject to disciplinary action because she committed the following repeated negligent acts during the care of Patients J.P. and G.P.:

a.) As more fully described in paragraphs 29 through 45, by failing to properly document Patient J.P.'s medical conditions in chart notes spread over three years of care such that a subsequent provider could provide appropriate follow-up represents a departure from the standard of care;

b.) As more fully described in paragraphs 29 through 45, by failing to document: a good faith examination; a treatment plan; a substance abuse history; informed consent; and/or a periodic review of pain treatment while prescribing controlled substances to Patient J.P. over a three-year period. All of the foregoing acts represent a departure from the standard of care;

c.) As more fully described in paragraphs 29 through 45, by fraudulently altering a medical record by adding "RTS if worsens" behind cryotherapy on the progress note dated September 26, 2012, after learning of litigation, represents a departure from the standard of care;

d.) As more fully described in paragraphs 29 through 45, by failing to properly follow physician assistant supervision statutes and regulations by failing to have a protocol that

specifically listed the treatments and/or procedures that Respondent was allowed to provide, failing to specifically list the illnesses that Respondent was allowed to treat, failing to have Dr. J.F. approve any of the controlled substances that were provided to Patient J.P. over a three year period, and/or failing to properly follow the procedures for physician chart review represents a departure from the standard of care;

e.) As more fully described in paragraphs 29 through 45, by failing to properly treat an atypical skin lesion located on Patient J.P. by using cryotherapy on it without conclusively knowing what the lesion was composed of, failing to obtain a biopsy of the atypical skin lesion, failing to obtain informed consent, and failing to seek consultation regarding the atypical skin lesion with Dr. J.F. represents a departure from the standard of care;

f.) As more fully described in paragraphs 46 through 58, by failing to adequately and accurately document the care provided to Patient G.P. in the repeated progress notes, including but not limited to failing to document support for her diagnosis of PCOS on November 17, 2010, and/or failing to document support for her diagnosis of possible rectocele on April 12, 2011, and/or failing to warn and/or document warning a patient with history of gastric bypass that NSAID medications are contraindicated due to concerns regarding ulcers represents a departure from the standard of care;

g.) As more fully described in paragraphs 46 through 58, by failing document a good faith examination, failing to document a treatment plan, failing to document a substance abuse history, failing to obtain informed consent, and/or failing to perform a periodic review of pain treatment while prescribing controlled substances to Patient G.P. over a five-year period represents a departure from the standard of care;

h.) As more fully described in paragraphs 46 through 58, by failing to properly follow physician assistant supervision statutes and regulations by failing to have a protocol that specifically listed the treatments and/or procedures that Respondent was allowed to provide, failing to specifically list the illnesses that Respondent was allowed to treat, failing to have Dr. J.F. approve any of the controlled substances that were provided to Patient G.P. over a five-year

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period, and/or failing to properly follow the procedures for physician chart review represents a departure from the standard of care;

i.) As more fully described in paragraphs 46 through 58, by continuing to prescribe to Patient G.P. between January 7, 2013, through February 19, 2014, without actually seeing Patient G.P. in clinic represents a departure from the standard of care.

**FOURTH CAUSE FOR DISCIPLINE**

(Alteration of Medical Record)

62. Respondent's license is subject to disciplinary action under sections 2262 and 3527 of the Code, in that she altered a medical record with fraudulent intent after learning of pending litigation.

63. Complainant re-alleges paragraphs 29 through 58, and those paragraphs are incorporated by reference as if fully set forth herein.

64. As more fully set forth in paragraph 36, Respondent altered a medical record with fraudulent intent by adding that she had informed the patient to "RTS if worsens" when in fact she had not initially written "RTS if worsens" in the chart.

**FIFTH CAUSE FOR DISCIPLINE**

(Prescribing without a Good Faith Examination)

65. Respondent's license is subject to disciplinary action under sections 2242 and 3527 of the Code, in that she prescribed controlled substances to Patients J.P. and G.P. without performing and/or documenting a good faith examination.

66. Complainant re-alleges paragraphs 29 through 58, and those paragraphs are incorporated by reference as if fully set forth herein.

67. As more fully described above, Respondent failed to perform a good faith examination of Patients J.P. and G.P. prior to repeatedly prescribing controlled substances.

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## SIXTH CAUSE FOR DISCIPLINE

(Inadequate Record Keeping)

68. Respondent's license is subject to disciplinary action under sections 2266 and 3527 of the Code in that she failed to maintain adequate and accurate records related to the provision of medical services to Patients J.P. and G.P. The circumstances are as follows:

69. Complainant re-alleges paragraphs 29 through 58, and those paragraphs are incorporated by reference as if fully set forth herein.

70. As more fully described above, Respondent failed to maintain adequate and accurate records related to the provision of the medical services to Patients J.P. and G.P.

## SEVENTH CAUSE FOR DISCIPLINE

(Conspiracy to Violate Moscone-Knox Professional Corporation Act)

71. Respondent's license is subject to disciplinary action under sections 125, 2234, 2286, 2406, 3527, 3541, and 3542 of the Code and sections 13400, 13401, and 13401.5 of the Corporations Code in that she conspired with Dr. J.F. to operate a "medical management" general corporation entitled "Massey Management Corporation" as a medical corporation, in violation of the Moscone-Knox Professional Corporations Act. The circumstances are as follows:

72. Complainant re-alleges paragraphs 29 through 58, and those paragraphs are incorporated by reference as if fully set forth herein.

73. On December 17, 2009, Respondent incorporated Massey Management Corporation as general corporation in the State of California by filing Articles of Incorporation with the Secretary of State's Office. On February 1, 2010, Respondent filed a Statement of Information with the Secretary of State's Office which stated that the type of business of the "Massey Management" corporation was "Physician Assistant." On January 27, 2014, Respondent filed a Statement of Information with the Secretary of State's Office which stated that the type of business of the "Massey Management" corporation was "medical." The January 27, 2014, Statement of Information specifically identified the Churn Creek Clinic as the address of operation and identified Respondent as the Chief Executive Officer. The Medical Board does not

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have any record of a fictitious name permit being issued for "Massey Management Corporation" to either Respondent or Dr. J.F.

74. On or about October 7, 2009, Respondent signed a contract entitled "Agreement Between J.F. M.D. and Blake Massey P.A.-C." ("contract") in her individual capacity as a licensee. Dr. J.F. signed the contract on or about October 16, 2009.[13] By the terms of the agreement, the contract would automatically renew unless a party provided 60 days notice of termination. The contract was expressly for the "purpose of defining the relationship and obligations between Dr. J.F. and Respondent in providing medical services at 3330 Churn Creek Road # D-4, Redding, California 96002."

75. Article 3 of the contract stated that billing services would be through a billing service corporation named CPR. Article 4 of the contract stated,

> "(t)he supervising physician **may use** the office facilities to see patients, as well as the business address and phone number upon mutually agreeable terms. Wednesday and Friday afternoons. The front office staff and back office staff **will also be available for your use** on the above stated days. Until further changes are agreed upon." (emphasis added)

Article 5 of the contract stated,

> "(t)he supervising physician's monthly **fee for this practice is $1000.00** (one thousand dollars) (sic) This fee is due and payable on the 1st of each month. Physician shall review 10% of the charts on patients seen by Blake Massey P.A.-C. on a weekly or biweekly basis." (emphasis added)

Article 6 of the contract stated,

> "(p)hysician and PA shall be responsible to pay their own taxes to the IRS and California State Franchise Board. Each provider is also responsible for his own **License fees**, vacation time, health insurance and association fees. Each party will pay of (sic) his or her own business license." (emphasis added)

Article 7 of the contract stated,

> "(e)ach provider is responsible for **their own patient's charts**, which must be stored for 3-5 years."

[13] As noted above this contract remained in place and renewed until 2014. It is the Board's contention that all activities under this contract remained an ongoing and continuous violation of the law until Respondent and Dr. J.F. severed their business relationship.

76. On August 1, 2014, Respondent testified as a witness at a deposition in a civil action entitled Patient J.P. and G.P. vs. J.F., M.D. et. al. Respondent was a named defendant. During questioning by plaintiff's counsel, Respondent stated that she had a joint account at Wells Fargo with Dr. J.F. entitled "Blake Massey, PA-C." A review of subpoenaed bank records by the Board revealed an account with an identification number ending in "1812". Respondent stated that while both she and Dr. J.F. had the authority to write checks from the account ending in "1812", Respondent wrote 100 percent of the checks issued from the account. Respondent stated that all medical services at 3330 Churn Creek Road, #D-4[14] were billed under Dr. J.F.'s medical provider number. Because all services were billed under Dr. J.F.'s medical provider number, all income was payable to Dr. J.F. and was deposited in the account ending in "1812". Respondent then dispersed the money from the account ending in "1812." A review of the account statements and checks written on account ending in "1812" revealed that Respondent paid a mid-level health practitioner, D.L., and Dr. J.F., directly out of that account for the patient services that they provided each month.[15] Respondent also transferred money from the account ending in "1812" to a separate Wells Fargo account entitled "Massey Management Corporation." Respondent stated that she transferred both the money she had earned providing patient services to her patients and the money that was required to pay the office expenses at the Churn Creek Medical Clinic to the account entitled "Massey Management Corporation."

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[14] At different times the Churn Creek Clinic was housed in two different suites. For sake of clarity, Churn Creek Clinic is meant to refer to both suite locations that existed at 3330 Churn Creek during the time that Respondent and Dr. J.F. were engaged in a business relationship.

[15] By way of example, Respondent signed the following checks to D.L. and Dr. J.F. out of the account ending "1812."

| Check Number | Date | Payee | Amount |
|---|---|---|---|
| 1477 | 12-5-2013 | D.L. | $14,727.14 |
| 1480 | 1-7-2014 | D.L. | $14,077.09 |
| 1482 | 2-13-2014 | D.L. | $10,325.81 |
| 1484 | 3-11-2014 | D.L. | $13, 738.67 |
| 1478 | 1-6-2014 | Dr. J.F. | $21,443.57 |
| 1481 | 2-5-2014 | Dr. J.F. | $15,263.79 |
| 1483 | 3-5-2014 | Dr. J.F. | $17,486.37 |

77. Respondent's Wells Fargo account entitled "Massey Management Corporation" had an account number that ended in "4444". The account ending in "4444" was controlled by Respondent. Respondent withdrew money from the account ending in "4444" and paid herself income. She also used account ending in "4444" to pay for all of the Churn Creek Clinic expenses. Clinic expenses paid for by Respondent included but was not limited to the building lease, office supplies, billing services, phone bills, and employee salaries. Respondent admitted that Dr. J.F. paid no office costs at the Churn Creek Clinic. Respondent also paid herself out of the account ending in "4444" for the patient services that she herself had provided. Respondent also paid personal expenses out of account ending "4444" including a Department of Motor Vehicle renewal, her physician assistant license fee, and her corporation filing fee.[16] Finally, Respondent paid Dr. J.F. $1,000.00 a month out of account ending "4444" to supervise her and D.L. at the clinic.[17]

78. At the deposition on August 1, 2014, Respondent was asked who owned the clinic and she responded that it was "unclear". She clarified saying that "we don't know who owns it." Respondent stated that mid-level practitioner D.L. reimbursed Respondent for half of the Churn Creek Clinic expenses and operated as a self-employed individual. Respondent admitted that she never talked to the Board about her business practices. Respondent admitted that she was "running" the practice. Respondent stated she had the authority to sign Dr. J.F.'s name on both business documents and on medical charts.

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[16] By way of example, here are three checks Respondent wrote for personal expenses as set forth in the October 2009 contract.

| Check Number | Date | Payee | Amount |
|---|---|---|---|
| 1732 | 7-9-2012 | DMV | $364.00 |
| 2094 | 12-31-2013 | State of California | $25.00 |
| 2114 | 1-29-2014 | PA Board License | $300.00 |

[17] By way of example, here are four checks written by Respondent out of account ending "4444" to pay Dr. J.F. his supervision fee.

| Check Number | Date | Payee | Amount |
|---|---|---|---|
| 1627 | 11-4-2013 | Dr. J.F. | $1000.00 |
| 2096 | 1-6-2014 | Dr. J.F. | $1000.00 |
| 2115 | 2-3-2014 | Dr. J.F. | $1000.00 |
| 2130 | 3-5-2014 | Dr. J.F. | $1000.00 |

79. Respondent's license is subject to disciplinary action because she conspired to violate the Moscone-Knox Professional Corporations Act by operating a Medical Corporation as a Physician Assistant at the Churn Creek Clinic location as evidenced by, but not limited to:

(a.) Operating a general corporation entitled "Massey Management Corporation" as a medical corporation while she remained the sole shareholder;

(b.) Providing medical care and treatment to patients without following the requirements as set forth in the Delegation of Services Agreement and Protocol with Dr. J.F.;

(c.) Personal control of all funds and assets;

(d.) Paying a physician a supervision fee and converting him to an independent contractor under the control of Massey Management Corporation;

(e.) Personal control of all facilities at the Churn Creek Clinic location;

(f.) Personal control of medical charts despite being a Physician Assistant;

(g.) Personal control and authority over all unlicensed medical staff at the Churn Creek Clinic location; and

(h.) by entering into a business relationship with Dr. J.F. in her individual capacity as a Physician Assistant and not as a Physician Assistant Corporation and Medical Corporation.

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## PRAYER

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License No. Number PA 15490, issued to Blake Massey, P.A.

2. Ordering Blake Massey, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. If placed on probation, ordering the payment of probation monitoring costs pursuant to section 3527(f);

4. Taking such other and further action as deemed necessary and proper.

DATED: August 2, 2017

MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
*Complainant*

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